THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.7211 of 2006

Dt.13-04-2006

Between:

K.Prabhakar Reddy

..Petitioner

and

1.The M.C.H., Tank Bund Road, Hyderabad

rep. by its Commissioner & Special Officer and another

..Respondents.

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A.GOPAL REDDY

W.P.No.7211 of 2006

Oral Order:

Heard both sides.

Learned counsel for the petitioner as well as the learned Standing Counsel for the respondent-Municipal Corporation represent that the writ petition may be disposed of in the light of the direction issued by a Division Bench of this court in. WP No.21198 of 1997 dated 03-02-1998.

Rule Nisi.

The petitioner claiming that himself and his family members are the owners of commercial complex bearing various Municipal Door Nos.16-10-27/105/19 to 25; 16-10-27/105/25-A&B; 16-10-27/105/26 to 30; 16-10-27/105/31;16-2-27/105/32 & 33; 16-10-27/105/33/A; 16-10-27/105/33/1 to 18; 16-10-27/105/33/1/1 situate at Malakpet, Hyderabad filed the present writ petition apprehending highhanded and illegal action of the respondents in trying to demolish his house/complex under the garb of widening of the road, which is in violation of Article 300-A of the Constitution.

Several writ petitions complaining against the arbitrary actions of the various Corporations, Municipalities and Panchayats in proceeding with the widening of the roads without due process of law were came up for consideration before this court and ultimately a Division Bench of this Court disposed of the W.P.No.21198 of 1997 dated 3-2-1998 with the following directions:

1. Whether a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days prior notice notifying as to the nature of the property to which it belongs and the proposed action calling for explanation/objections, if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government, any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, he authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies/Government property, the question of damages does notaries. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

In view of the same, whenever the respondent—Corporation is proceeding with the widening of the roads, they are bound to proceed with the same by following due procedure contemplated under Sections 146 and 147 of the HMC Act, 1955. In case if the petitioner is not agreeable to part with the property by negotiations, the same has to be acquired under Land Acquisition Act, 1894.

Following the guidelines issued by a Division of this Court in the above case, this writ petition is disposed of with a direction to the respondent—Corporation not to demolish the petitioner's commercial complex bearing Municipal Door Nos. 16-10-27/105/19 to 25; 16-10-27/105/25-A&B; 16-10-27/105/26 to 30; 16-10-27/105/31; 16-2-27/105/32 & 33; 16-10-27/105/33/A; 16-10-27/105/33/1 to 18; 16-10-27/105/33/1/1 situate at Malakpet, Hyderabad without following due process of law. However, this order will not preclude the respondent-Corporation to negotiate with the petitioner and if the petitioner has not consented to give the property in question, it is open for the respondent-Corporation to acquire the same in accordance with law. No costs.

_____ A.GOPAL REDDY, J.

13-04-2006

Murthy